SINGLE BENCH

(4)

CF 1007

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W. P. (L) No. ~~-/2006~~ 25/07

PETITIONER : Shankar Lal Chouhan S/o Mahettarlal Chauhan
R/o Rambhatha Road,
Raigarh (C.G.)

VERSUS

RESPONDENTS

1. Chhattisgarh Infrastructure Devolpment Corp.
Through- Divisional Manager,
C.I.D.C. (Transport Section) Bus Stand
Bilaspur (C.G.)
2. M.P. Road Transport Corporation,
Through- Managing Director,
Head Office Habib Ganj Bhopal (M.P.)
3. Industrial Court
Through-Member Judge
Raipur (C.G.)

P.R. No. 662/07
Presented by S.P. Kale
dated 22/1/07

Writ Petition under Articles 226/227 Constitution of India.

(S1)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (L) No. 25 of 2007

Petitioner : Shankar Lal Chouhan

-Versus-

Respondents : Chhattisgarh Infrastructure Development Corporation Ltd. & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri S. P. Kale, Advocate for the Petitioner.

ORDER

(Passed on this 5th day of February, 2007)

1. The present petition filed under Article 226/227 of the Constitution of India challenges the validity of the order dated 27.11.2006 (Annexure P/8) passed by the Industrial Court/respondent No. 3 in Appeal No. 47/CGIR Act/A-II/2006, whereunder the order dated 10.5.2006 (Annexure P/6) passed by the Labour Court in Case No. Category-I/A/20/CGIR Act/2004 has been set-aside/quashed.

2. The undisputed facts, in brief, are that the petitioner was initially appointed as Badli employee on the post of driver in the erstwhile Madhya Pradesh State Road Transport Corporation Ltd. His services was transferred to the respondent No.1 on bifurcation of the then respondent No.2. The petitioner was disengaged in July, 2003 on the ground that his services was no longer required.

3. Being aggrieved the petitioner filed an application under section 31(3) of the Chhattisgarh Industrial Relations Act, 1960 before the Labour Court. The Labour Court vide order dated 10.5.2006 (Annexure P/6), after having considered all the facts held that since the petitioner was appointed as Badli driver in 1996 and thereafter he was continuing on

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that post, the petitioner was entitled to show cause notice before removal of his service, thus it was held that the order of removal from service was illegal. Accordingly, the Labour Court directed reinstatement within a period of 45 days in the service of the respondent No.1 and back wages w.e.f. January, 2003 to June, 2003 from the respondent No.1/employer.

4. Being aggrieved the respondent/employer filed an appeal before the Industrial Court. The Industrial Court vide order dated 27.11.2006 (Annexure P/8) held that the appointment of the petitioner was as badli driver and the application of the petitioner for regularization was dismissed by the Labour Court in Case No. 10/CGIR Act/2003, thus the principle of res judicata is applicable. It was further held that the petitioner had not proved as to whether he had worked for 240 days in the preceding year against sanctioned post. Badlidar, being a temporary appointment is not entitled to reinstatement in service. In view of the above, the Industrial Court quashed the order passed by the Labour Court and allowed the appeal filed by the respondents/employer.

5. Being aggrieved the petitioner has filed this petition on the ground that though the petitioner was appointed as Badli employee, in view of the fact that he had worked for more than 240 days, the termination of the petitioner from service is illegal. Thus the order of the Industrial Court is bad, illegal and unjust.

6. Having heard learned counsel for the petitioner and having perused the pleadings and documents appended thereto, it is admittedly proved that the appointment of the petitioner was as a badli employee on the post of driver. As per the definition, a badli employee means an employee who is employed on the post of a permanent employee, or a probationer or a permanent seasonal employee who is temporarily

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absent. Since the appointment of the petitioner is not in accordance with the Rules or against sanctioned post, the petitioner has no right to the post as held by the Hon'ble Supreme Court in the case of **Municipal Council, Sujanpur Vs. Surinder Kumar** { (2006) 5 S.C.C. 173}, in paragraph 18 has held as under:-

> *"18. If a post is not a sanctioned one, again, appointment therein would be illegal. In M.P. Housing Board v. Manoj Shrivastava[9] this Court stated the law in the following words: (SCC p. 707, paras 8-11)*
>
> *"8. A person with a view to obtain the status of a 'permanent employee' must be appointed in terms of the statutory rules. It is not the case of the respondent that he was appointed against a vacant post which was duly sanctioned by the statutory authority or his appointment was made upon following the statutory law operating in the field.*
>
> *9. The Labour Court unfortunately did not advert to the said question and proceeded to pass its award on the premise that as the respondent had worked for more than six months satisfactorily in terms of clause 2(vi) of the Standard Standing Orders, he acquired the right of becoming permanent. For arriving at the said conclusion, the Labour Court relied only upon the oral statement made by the respondent.*
>
> *10. It is one thing to say that a person was appointed on an ad hoc basis or as a daily-wager but it is another thing to say that he is appointed in a sanctioned post which was lying vacant upon following the due procedure prescribed therefore.*
>
> *11. It has not been found by the Labour Court that the respondent was appointed by the appellant herein, which is 'State' within the meaning of Article 12 of the Constitution, upon compliance with the constitutional requirements as also the provisions of the 1972 Act or the Rules and Regulations framed thereunder."*

7. In the present case, the appointment of the petitioner as badlidar is not in dispute. The reasoning of the Labour Court that though the petitioner was a badlidar employee, since he continued for long period

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i.e. more than seven years, the petitioner is entitled to proper show cause notice before the appointment was disengaged, is not in consonance with the settled position of law. A temporary employee appointed de-horse the constitutional scheme of employment, not in accordance with law, has no right to the post. It is further well settled principle of law that an employee who has no right to the post has further no right to reappointment, reinstatement or regularization in service.

8. In the case of **Govt. of A.P. and others Vs. Mohd. Nasrullah Khan** {(2006) 2 SCC 373}, the Supreme Court held that it is well settled that the High Court exercising of judicial review under Article 226/227 of the Constitution of India does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. In the present case, the Labour Court has committed serious error which has been rightly corrected by the Industrial Court by setting aside the order passed by the Labour Court.

9. For the reasons stated hereinabove, it is not warranted to interfere with the findings and orders passed by the Industrial Court. As a result this petition is dismissed, summarily.

Sd/-
Satish K. Agnihotri
Judge

Thakur